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C.R.P.No.5251 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-01-2025

CORAM

THE HONOURABLE MR JUSTICE V. LAKSHMINARAYANAN

CRP No. 5251 of 2024
AND CMP No. 29375 of 2024

Francis Manoharan Petitioner
Vs

1.Prameela
2.Juliet Jayakumari Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India praying to set aside the fair order dated 14.06.2024 passed in IA No.4 of 2023 in OS No.69 of 2010 on the file of Additional District Court at Chengalpattu.

For Petitioner : Mr.D.Senthil Kumaar
For Respondent : Mr.R.Thamilselvan for Mr.M.Ramamurthy – for R1

ORDER

This Civil Revision Petition challenges the order dated 14.06.2024 passed in IA No.4 of 2023 in OS No.69 of 2010 on the file of Additional District Court at Chengalpattu.

2. There is no dispute in the relationship between the parties. The plaintiffs are the daughters of one Charles @ Sithirai and the first defendant Soundari. From the wedlock, the said Sithirai and Soundari were blessed with five daughters and



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one son. The fifth daughter has been arrayed as second defendant and the son has been arrayed as third defendant. It is the case of the plaintiffs that on the death of their father on 01.05.2008, the parties to the suit succeeded to the estate in equal shares. They pleaded that they came to know a settlement deed had been executed in favour of the third defendant and when they protested about the same, the third defendant agreed for cancellation of the deed. They pleaded that on 23.09.2007, the said Charles @ Sithirai had executed a 'WILL' bequeathing the properties to all the parties to the suit. As the third defendant is evading partition of the properties despite the request made by the plaintiffs, they were constrained to file the suit for partition.

3. On being served with summons, the first defendant filed a detailed written statement. She admitted that the plaintiffs and the defendants 2 and 3 are her children. She pleaded that items 1 and 2 of the suit schedule mentioned property was the subject matter of settlement deed executed by Charles in favour of the third defendant and that insofar as item No.3, a 'WILL' had been executed in favour of the third defendant on 11.06.2007. She pleaded that items 1 to 3 of the suit schedule properties are not available for partition and conceded that the 4th item is so available. The third defendant filed a memo adopting the written statement filed by his mother. Unfortunately, pending the litigation the first defendant passed away. The learned Judge recorded the death of the first defendant by an order dated 16.09.2021 in I.A.No.2 of 2021. On the basis of these pleadings, the parties



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were pushed to trial.

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4. The case of the plaintiffs has been completed and now it is the turn of the defendants. The defendants have filed a proof affidavit and are in the witness box awaiting cross examination. At that stage, the plaintiffs filed an application in I.A.No.4 of 2023 seeking for an amendment of plaint to declare that the settlement deed executed on 31.05.2007 by their father Charles in favour of the third defendant is null and void and also to declare the consequent settlement deed executed by the third defendant in favour of his wife Prema is null and void.

5. This application received as I.A.No.4 of 2023 was opposed by the third defendant, pleading that the application is barred by limitation. He further pointed out that in terms of the proviso to Order VI Rule XVII, amendment should not be ordered since the plaintiffs have not shown due diligence. The Trial Judge considered the affidavit and counter and came to a conclusion that the plaintiffs should be permitted in order to give complete relief to the parties. She also found that by granting the amendment, the Court will be in a position to come to a right conclusion. Aggrieved by the same, the present Civil Revision Petition before this Court.

6. I heard Mr.D.Senthil Kumar for the civil revision petitioner and Mr.D.Thamilselvan for Mr.M.Ramamurthy for the first respondent.



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7. Placing reliance upon the judgment in **Pandit Malhari Mahale -vs- Monika Pandit Mahale and Others** in Civil Appeal No.189 of 2020 dated 10.01.2020, Mr.Senthil Kumaar argues that as no reason has been given by the plaintiffs in the affidavit filed in support of the amendment petition, the trial Court erred in granting the relief. He further urges that the plaintiffs were aware of the settlement deed and could have sought for the relief even at the time of presentation of the plaint. In any event, he urges that as the mother had disclosed regarding the settlement deed executed by Charles @ Sithirai in favour of the third defendant and about the settlement deed executed by the third defendant in favour of his wife J.Prema as early as in 2010, the application for amendment in the year 2023 is hopelessly barred by limitation.

8. Per contra, Mr.Thamilselvan argues that pending the suit for partition, the Court has adopted a justice oriented approach in allowing the application. He pointed out that the counsel who had drafted the plaint at the time of presentation of the plaint, had inadvertently left out the relief of declaration. He states that no prejudice will be caused to the defendants by virtue of the amendment. He seeks for confirmation of the order.

9. I carefully considered the submissions made by both sides and perused the materials placed on record.



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10. Here is a case of partition instituted by the sisters as against the mother and another sister and brother. There is absolutely no dispute in the relationship between the parties. Neither is there a dispute that the property belonged to Charles @ Sithirai. The cause of action for the plaintiffs is the death of their father. It is the specific case of the plaintiffs that the third defendant had agreed that on 23.09.2007, he will come for execution of the cancellation of the settlement deed. They further pleaded that Charles had executed a 'WILL' ignoring the settlement deed bequeathing the property in favour of the both the plaintiffs and the defendants.

11. On the one hand the plaintiffs pleaded that the settlement deed had not come into force, whereas the first and third defendants pleaded that the settlement deed not only came into force, but also on the strength of the settlement deed, the third defendant transferred the property in favour of his wife J.Prema. Since the third defendant is projecting the settlement deed which has been denied by the plaintiffs, in terms of Section 68 of the Indian Evidence Act, he would have to examine the attesting witness to substantiate the settlement deed. Had the evidence been completely concluded, that is to say, if the attesting witness been examined at that stage, and the relief of declaration had been sought for perhaps the right of the defendants might have been affected. The suit being one for partition, in which the plaint has ignored the settlement deed, by granting the relief



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of amendment, permitting the plaintiff to question the settlement deed in addition to the main relief of partition, I feel the right of the third defendant is not going to be prejudiced in any manner.

12. Furthermore, the reason for seeking the amendment has been spelt out in Para 3 of the affidavit in support of I.A.No.4 of 2023. The plaintiff has pleaded that though the counsel was requested to seek for the relief of declaration, at the time of drafting the plaint, he did not seek for the said relief. It is trite that the mistake committed by the counsel should not be foisted on the parties. This fact that the counsel has not framed the plaint properly distinguishes this case from the judgment cited by Mr.Senthil Kumaar in the case of **Pandit Malhari Mahale -vs- Monika Pandit Mahale and Others.** There was absolutely no reason that had been given by the respondents therein when they sought for the relief of amendment.

13. I have to take note of the fact that the parties are litigating in the suit from a moffusil area. The parties would clearly instruct the counsel to draft the plaint as well as the prayer. It is nobody's case that the parties are well informed about law and its procedures. The facts pleaded in the plaint are sufficient to show that the plaintiffs are denying the execution of the document. It is further settled that the prayer that is sought for by the party in the amendment application need not bind the Court at the time of granting the relief in case the Court comes to a



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conclusion to decree the suit.

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14. However, I have to take note of the plea of Mr.Senthil Kumaar that the application has been filed with delay as the plaintiffs' side witnesses have already been examined, and by amending the plaint the defendant is going to be put to trouble of filing an additional written statement. This can be off set by imposing a heavy condition on the plaintiffs.

15. Furthermore, on the plea of limitation, the learned trial Judge can always call upon to frame an additional issue. The issue whether the amended relief is barred by limitation being a mixed question of law and fact, I am sure that if such an issue is framed, the parties will be entitled to let in evidence on the said plea.

16. In the light of the above discussion, the civil revision petition is partly allowed on the following terms.

- (a) The grant of leave by the learned Trial Judge to the plaintiffs to amend the plaint is sustained.
- (b) The plaintiffs shall pay costs of **Rs.10,000/- (Rupees Ten Thousand only)** to the third defendant for having filed the application with delay.
- (c) The costs shall be paid within a period of **eight weeks** from the



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date of receipt of a copy of this order.

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- (d) Learned Trial Judge shall grant **two weeks** time to the third defendant to file his additional written statement. Thereafter she shall recast the issue and frame a single issue on the period of limitation.
- (e) As the amendment application has been allowed, which would affect the right of J.Prema wife of the third defendant, the learned Judge is requested to permit the plaintiffs to implead the said J.Prema as party defendant to the suit and also grant the said Prema sufficient time to file a written statement to defend the settlement in her favour.
- (f) In case the costs of Rs.10,000/- is not paid within a period of eight weeks from the date of receipt of a copy of this order, the benefit of the amendment will not enure in favour of the plaintiffs.

17. With the above directions, this civil revision petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.01.2025



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Index : Yes/No

Neutral Citation : Yes/No

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To

The Additional District Court
at Chengalpattu.



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V.LAKSHMINARAYANAN, J.

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